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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/740,747	12/19/2003	Gary Karlin Michelson	102.0001-12000	4978
22882	7590	05/31/2007		
MARTIN & FERRARO, LLP 1557 LAKE O'PINES STREET, NE HARTVILLE, OH 44632			EXAMINER BROWN, MICHAEL A	
			ART UNIT 3772	PAPER NUMBER
			MAIL DATE 05/31/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/740,747

Applicant(s)

MICHELSON, GARY KARLIN

Examiner

Michael Brown

Art Unit

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 10-31 is/are pending in the application.
- 4a) Of the above claim(s) 1 and 10-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 19-31 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- ☐ Notice of Informal Patent Application
- ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19-23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brantigan '915 in view of Johnson '229

Brantigan discloses in figure 6 an implant comprising a body 11, having a leading end, a trailing end, and a mid-longitudinal axis (fig. 6), at least one surface projection 11c, extending from the exterior surface of the implant, the implant is a spinal implant, the threading end of the implant is adapted to be wholly contained within the implant space (fig. 3) and the body includes at least one opening (the openings are formed by 11c) and the body includes a hollow interior (fig. 6) that is in communication with at least one opening 19. However, Brantigan doesn't disclose the at least one surface projection being configured to resist backward rotation. Brantigan '915 does teach in figure 9 a spinal implant having threads 33b. However, these threads don't disclose an anti-rotational configuration. Johnson teaches in figure 1-32 an implant 10, comprising threads 14 that are configured to prevent rotation (locking threads). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the threads as taught by Johnson could be substituted for the threads as taught by Brantigan in order to prevent the implant from coming unfasten from the vertebrae.

Claims 24-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims above, and further in view of Brantigan 757.

Brantigan teaches in figures 1-5 a spinal implant comprising at least one opening 24, that interrupts surface projections 23, the surface projection is a tab 23, the surface projection is interrupted by openings 24, fusion promoting material that is bone 26 and the surface projection is blunt (the flat side of 23 is blunt). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the openings that interrupts the surface projections as taught by Brantigan '757 could be incorporated into the spinal implant disclosed by Brantigan in order to use the opening to allow tissue and bone to grow into the implant. The surface projections as taught by Brantigan could be substituted for the threads disclosed by Brantigan '915 and taught by Johnson because the blunt side of the surface projections would prevent the implant from coming out the vertebrae. As for the thread being twisted, that is a design choice that was not indicated as being critical in the specification.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 571-272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3772

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M. Brown
May 27, 2007

A handwritten signature in black ink, appearing to read 'M. Brown' with a stylized flourish at the end.

MICHAEL A. BROWN
PRIMARY EXAMINER